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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 ANDRE BENARD,)
17 Defendant.)
18

No. CR 12-0780 SI

~~PROPOSED~~ ORDER EXCLUDING
TIME FROM OTHERWISE APPLICABLE
SPEEDY TRIAL ACT COMPUTATION

19
20 The parties appeared before the Court on December 7, 2012 for status on this case and on
21 the related case, CR 05-0400 SI. The defendant, Andre Benard, appeared in custody, represented
22 by Mark Goldrosen, Esq., and the government appeared through Assistant U.S. Attorney
23 Andrew M. Scoble.

24 The parties previously appeared on November 2, 2012 before the Court, at which time the
25 Court granted their request that it relate this case to the earlier case, CR 05-0400 SI, and their
26 request for a continuance to December 7, 2012 with an exclusion of time so that the government
27 could assemble and produce discovery, and defense counsel could review that discovery, and to
28 allow the government further time to try to complete forensic testing that might bear on the

1 parties' attempts to explore a global settlement of pending and future charges against the
2 defendant..

3 At the December 7, 2012 hearing, the parties jointly requested a further continuance of
4 this case, until February 15, 2013. The parties represented to the Court that, while the bulk of
5 relevant discovery has been provided in this case, the government will be providing further
6 discovery shortly. Further, the government reported that it is still awaiting DNA testing by the
7 FBI Laboratory with respect to a firearm seized by local police in Burlingame, California, and
8 that the test results could well impact whether further charges are brought against the defendant
9 in connection with that second firearm. Counsel for both parties agreed that it is important to
10 learn the results of the DNA testing in order to discuss the actual and potential charges at issue
11 and explore whether a global resolution of charges is possible. The parties pointed out, further,
12 that the defendant is currently in custody on the pending Amended Form 12, and has already
13 admitted at least some of the pending charges of supervised release. Defense counsel
14 represented, additionally, that he needs to know the DNA results in order to assess defense
15 strategies and potential motions in this pending case.

16 In open court, the defendant agreed to a continuance from December 7, 2012 to February
17 15, 2013, with a Speedy Trial Act exclusion.

18 The Court agrees that the requested continuance is appropriate, and that the period
19 should be excluded from the otherwise applicable Speedy Trial Act computation, because failure
20 to grant the continuance as requested would unreasonably deny the defendant continuity of
21 counsel and the reasonable time necessary for effective preparation, taking into account the
22 exercise of due diligence.

23 Based upon the above-described representations and the parties' agreement in open
24 Court, THE COURT FINDS THAT the ends of justice served by granting a continuance from
25 December 7, 2012 through and including February 15, 2013 outweigh the best interest of the
26 public and the defendant in a speedy trial, and that failure to grant such a continuance would
27 unreasonably deny the defendant the reasonable time necessary for effective preparation, taking
28 into account the exercise of due diligence.

1 Accordingly, THE COURT ORDERS THAT:

2 1. This case is continued to February 15, 2013 at 11:00 a.m. for further status and
3 setting.

4 2. The period from December 7, 2012 through and including February 15, 2013 is
5 excluded from the otherwise applicable Speedy Trial Act computation, pursuant to 18 U.S.C.
6 § 3161(h)(7)(A) & (B)(iv).

7 IT IS SO ORDERED.

8
9 DATED: 12/11/2012



HON. SUSAN ILLSTON
United States District Judge